

JUN 12 1997

DEPT. OF INSURANCE
BY Kate

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:) Docket No. 97A-058-INS
)
EDWIN STEWART MAST,) **ORDER**
)
Petitioner.)

On June 5, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.
2. All insurance licenses issued by the Arizona Department of Insurance to Edwin Stewart Mast are revoked.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of

Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,
pursuant to A.R.S. §41-1092.10.

DATED this 12 day of June, 1997



John A. Greene
Director of Insurance

A copy of the foregoing mailed
this 12 day of June, 1997

Charles R. Cohen, Deputy Director
Catherine O'Neil, Assistant Director
Scott Greenberg, Business Administrator
John Gagne, Assistant Director
Bonnie Carrillo, Investigator
Maureen Catalioto, Supervisor
Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, AZ 85018

Shelby Cuevas
Assistant Attorney General
1275 W. Washington
Phoenix, AZ 85007

Office of Administrative Hearings
1700 W. Washington, Suite 602
Phoenix, AZ 85007

Edwin Stewart Mast
2706 N. Dakota Street
Chandler, AZ 85224

Edwin Stewart Mast
Green Acres Mortuaries & Cemetery
401 N. Hayden Road
Scottsdale, AZ 85257

Forethought Life Insurance Company
Forethought Center
Batesville, IN 47006

Kathy Hindu

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97A-058-INS

RECOMMENDED DECISION

OF ADMINISTRATIVE

LAW JUDGE

APPEARANCES: Assistant Attorney General Gerrie Marks on behalf of the Arizona Department of Insurance and Edwin Stewart Mast on his own behalf.

Based on the entire record of this matter, the following recommended Findings of Fact, Conclusions of Law and Recommended Order are made:

1. Respondent Edwin Stewart Mast ("Mr. Mast") is currently licensed by the Arizona Department of Insurance (the "Department") as a life and disability insurance agent. That license (License No.22085) expires October 31, 1997.

3. On January 31, 1995, Judgment was entered in Case No. CV93-00941. The Court found that Mr. Mast had committed breach of contract and fraud against the Valley National Bank (the "Bank") and awarded the Bank the sum of \$31,550.28 plus interest at the rate of 10% until paid in full by the Defendants Edwin Mast and Jane Doe Mast dba Mast Enterprises.

5. In Case No. 2 CA-CV 96-0120, the Court of Appeals affirmed the Superior Court's findings and Judgment in Case No. CV93-00941 and issued a Memorandum Decision and Order. In its decision, the Court addressed the following issues: a) improper denial of jury trial; b) fraud claim should have been dismissed as time barred:

Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, Arizona 85007
(602) 542-9826

1 c) certain evidence should have been precluded for violation of disclosure rules; d) the
2 evidence is insufficient to support the Judgment; and e) form of judgment was not
3 furnished to the Court in a timely manner. The Court determined that none of the
4 above -mentioned grounds for appeal were established .

5 6. It is uncontroverted that the Order and Memorandum Decision issued in Case
6 No. 2 CA-CV 96-0120 was not appealed and is a final determination of the Judgment
7 rendered in Case No.CV93-00941.

8 7. At the hearing, Mr. Mast attempted to collaterally attack the Judgment in Case
9 No. CV93-00941 and was informed by the Administrative Law Judge that
10 this tribunal was the inappropriate forum in which to relitigate the above-mentioned
11 determinations of the Maricopa County Superior Court and Court of Appeals.

12 8. Elaine Obanion, a sales manager with Green Acres Memorial Gardens and
13 Mortuary ("Green Acres") , Mr. Mast's employer, testified that she has known Mr. Mast
14 for six years and that he is the most honest man she has dealt with. Ms. Obanion is Mr.
15 Mast's supervisor at Green Acres and was made aware of the above-mentioned civil
16 litigation and Judgment obtained against Mr. Mast which did not change her opinion of
17 Mr. Mast's character. According to Ms. Obanion, Mr. Mast is very involved in church
18 activities and with his family and is committed to both.

19 9. Ms. Obanion was a sincere and credible witness and it is determined that her
20 testimony as set forth above is credible.

21 10. Although Mr. Mast presented several letters of character, none of the
22 individuals who authored those letters excepting Ms. Obanion, were present at the
23 hearing and available for cross-examination by Department's counsel nor could the
24 Administrative Law Judge observe their demeanor. Therefore, the letters of character
25 admitted into evidence were not given substantial weight.

26 11. Mr. Mast contended at the hearing that he did not commit fraud against the
27 Bank and provided an explanation as to the background of the events that gave rise to
28 the above-mentioned civil litigation. However, Mr. Mast did not present any evidence to
29 refute the Judgment entered in CV93-00941 or Case No. 2 CA-CV 96-0120.

30 12. Mr. Mast submitted excerpts of the sworn testimony of Kenneth L. Defoor in
Case NO. CV93-00941 (Exhibit D), who previously worked with Mr. Mast in Mast
Enterprises during the relevant times, in support of Mr. Mast's good character.
Although Exhibit D is the sworn testimony of Mr. Defoor, the testimony presented is only
a portion of the testimony Mr. Defoor gave at the trial in Case No. CV93-00941 and Mr.
Defoor was not present at the hearing so as to be subject to cross-examination or
observation by the Administrative Law Judge. As such, Mr. Defoor's sworn testimony
as set forth in Exhibit D was not given substantial weight.

13. Mr. Mast credibly testified that he has been a minister for the past 30 years
though he was not active as a pastor at the relevant times and that he is honest and
would not intentionally deceive anyone. Mr. Mast has been licensed in the State of
Arizona as an insurance agent and , to his knowledge, has not had any other
complaints against him in that capacity.

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CONCLUSIONS OF LAW

1. The Judgment entered in Case No. 93-000941 and Order and Memorandum Decision entered in Case No. 2 CA-CV 96-0120 constitutes a record of dishonesty in business or financial matters within the meaning of A.R.S. §20-290(B)(2).

2. Mr. Mast's conduct as set forth above in the Findings of Fact constitutes cause for which original issuance or any renewal of the License could have been refused pursuant to A.R.S. §20-316(A)(1).

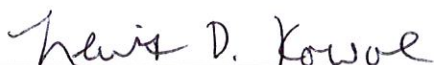
3. Mr. Mast's conduct as set forth above in the Findings of Fact does not constitute a wilful violation of, or wilful noncompliance with, any provision of A.R.S., Title 20 or any lawful rule, regulation or order of the Director of the Department (the "Director").

4. Mr. Mast's conduct as set forth above in the Findings of Fact are sufficient grounds for the Director to suspend, revoke or refuse to renew the License and impose a civil penalty pursuant to A.R.S. §§20-316(A) and 20-316(C).

RECOMMENDED ORDER

Based on the above, the Administrative Law Judge recommends that the Director of the Arizona Department of Insurance revoke all insurance licenses issued by the Arizona Department of Insurance to Edwin Stewart Mast.

Done this day, June 5, 1997.



Lewis D. Kowal
Administrative Law Judge

Original transmitted by mail this
5 day of June, 1997, to:

Mr. John A. Greene, Director
Department of Insurance
2910 North 44th Street, #210
Phoenix, AZ 85018-7256

ATTN: Curvey Burton

By 